IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 476.

SEARS, ROEBUCK AND CO.,
Petitioner,

vs.

CARPET, LINOLEUM, SOFT TILE AND RESILIENT FLOOR COVERING LAYERS, LOCAL UNION NO. 419, AFL-CIO,
Respondent,

AND

CLYDE F. WAERS, REGIONAL DIRECTOR OF THE TWENTY-SEVENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MOTION OF TERMINAL FREIGHT HANDLING COMPANY AND TERMINAL FREIGHT COOPERATIVE ASSOCIATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE IN SUPPORT OF THE POSITION OF PETITIONER.

Terminal Freight Handling Company and Terminal Freight Cooperative Association respectfully move for leave to file a brief *amicus curiae* in support of the petition for writ of certiorari herein.

Terminal Freight Handling Company and Terminal Freight Cooperative Association are currently engaged, as appellants, in a proceeding before the Third Circuit Court of Appeals (Nos. 17,907, 17,910), which involves the same issues as those raised in the petition filed herein by Sears, Roebuck and Co. Specifically, the Third Circuit case concerns the question whether, under Section 10(l) of the National Labor Relations Act, a charging party before the Board has standing to protest the District Court's approval of a settlement stipulation in lieu of the injunctive relief desired by the charging party, and whether the charging party has standing to appeal the District Court's decision.

1. Thus, the Third Circuit case involves essentially the same question on the nature and extent of charging parties' appellate rights under the same section of the statute as that which is involved in the Sears' case. Moreover, in the briefs which have been filed in the Third Circuit, the decision of the Tenth Circuit, from which review is being sought, has been cited as analogous precedent. The holding of the Tenth Circuit, therefore, may well govern and control the result in the Third. In asking leave to file a brief in aid of Petitioner's efforts to review and set aside the Tenth Circuit decision, movants seek to protect and advance their vital interests, which the Tenth Circuit decision has placed in jeopardy.

Oral argument in the Third Circuit is scheduled for this autumn.

2. Terminal Freight Handling Company and Terminal Freight Cooperative Association believe that a full resolution of the question of charging parties' rights under Section 10(l) can best be made by this Court when it is

confronted with the varying situations in which the same problem can and does arise, and the effect on which should be considered by this Court in articulating an appropriate and encompassing decisional rule. For example, the Tenth Circuit case involves a charging party's appeal from the merits of an adverse District Court decision. The Third Circuit case differs in that the charging parties there sought to appeal both the District Court's denial of their exercise of granted rights of participation in the District Court as well as the decision itself which resulted therefrom. Yet, both appeals, though differing in nature of the deprivation sought to be reviewed, are predicated upon the same granting of rights to the same parties by the same language in Section 10(l) of the Act. Knowledge of the circumstances of the Third Circuit case will assist this Court both in appreciating the need to address itself to the question of the range of charging parties' rights flowing from Section 10(l), and in dealing with the problems creating that need.

3. Terminal Freight Handling Company and Terminal Freight Cooperative Association have, pursuant to Rule 42 of the Rules of this Court, requested consent of all parties to file a brief *amicus curiae* in this matter. While consents were forthwith received from the Honorable Erwin N. Griswold, Solicitor General of the United States, and from Sears, Roebuck and Co., consent was not received from the Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419, AFL-CIO.

Wherefore, in recognition of these considerations and in view of the general importance of the issues involved and of the vital interest therein of Terminal Freight Handling Company and Terminal Freight Cooperative Associa-

tion, it is respectfully requested that this Motion for Leave to File a Brief *Amicus Curiae* be granted.

Respectfully submitted,

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BRIEF AMICUS CURIAE ON BEHALF OF TERMINAL FREIGHT HANDLING COMPANY AND TERMINAL FREIGHT COOPERATIVE ASSOCIATION IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI HEREIN

INTEREST OF THE AMICUS CURIAE

Terminal Freight Handling Company and Terminal Freight Cooperative Association (also herein called "Com

pany" and "Association", respectively), are appellants' in a case currently pending before the Third Circuit Court of Appeals[2] which involves the same general question as that presented in the captioned petition herein supported. Briefs have already been filed in the Third Circuit and oral argument is scheduled for sometime this autumn.

In the Third Circuit case, just as in the instant *Sears* case, charges were filed with the National Labor Relations Board alleging that the charged respondent-union was engaging in an unlawful secondary boycott in violation of Section 8(b)(4)(B) of the National Labor Relations Act, 29 U. S. C. § 158(b)(4)(B). The Regional Director found merit in the charges and, pursuant to his mandatory duty under Section 10(l) of the Act, petitioned the District Court for appropriate injunctive relief. However, prior to the District Court's hearing on the injunction petition, the Regional Director and the respondent union agreed to a stipulation providing that the union would cease its alleged unlawful conduct. The Regional Director then moved the District Court to approve this Stipulation in lieu of conducting a hearing on its petition and granting injunctive relief. The Company and the Association, charging parties before the Board, opposed the approval of the

1 The Association is a non profit organization, consisting of forty six (46) companies, which receives less than carload and less than truckload shipments, consolidates such shipments into carload lots and reships such goods to members' plants at various locations throughout the United States.

The Company is a non-profit Delaware corporation engaged in the handling, consolidation and transshipment of freight as manager of the Association. It operates thirty six (36) terminal facilities in twenty four (24) States and the District of Columbia.

2 That case, filed in the Third Circuit on May 15, 1969 and docketed as Nos. 15,907 and 15,910, is entitled *Bernard Samoff, Regional Director of the Fourth Region of the National Labor Relations Board, Petitioner Appellee, v. International Association of Machinists, District Lodge No. 1, Respondent Appellee (Terminal Freight Cooperative Association, Charging Party Appellant and Terminal Freight Handling Co., Charging Party Appellant)*

Stipulation which would deprive them of the protection of a court-ordered injunction and the potential sanction of contempt connected therewith. The District Court judge declined to hear and consider the charging parties' objections, however. He predicated his refusal on the ground that they did not possess the status of "parties" in the District Court proceeding; that is, they were not "parties" and had not moved to "intervene", although their counsel had filed an appearance in the case, and therefore they were asserted to lack standing to be heard.

The judge incorporated this ruling in his Order approving the Stipulation:

> "The Stipulation of Petitioner [the Regional Director] and Respondent as modified and initialed by them is hereby approved over objection of Terminal Freight Cooperative Association and Terminal Freight Handling Co., Charging Parties, who, having entered their appearances by counsel but who have not moved to intervene, do not constitute parties and lack standing to be heard on their objections."

Thus the charging parties were not permitted to protest what they viewed as the Regional Director's compromise of his original position in which he sought a hearing on his Petition and an Order of Court granting injunctive relief, which compromise had resulted in damage to their essential interests and deprived them of the specific relief called for by the Act.

The Company and the Association, the charging parties, appealed the judge's Order to the Third Circuit on the ground that they were denied their rights as "parties" to the proceedings in the District Court, the existence of which status obviated any need to seek to intervene in that court, and were thereby deprived of rights guaranteed them in Section 10(l) of the Act.

The Board moved to dismiss the appeal in the Third

Circuit on two grounds which are relevant here. First, charging parties lack standing to appeal *either* the alleged denial of rights conferred upon them in the District Court by Section 10(1) or the result reached by the District Court judge; this lack of standing was said to be a consequence of the statute's failure expressly to accord them such appellate rights. Second, the Norris-La Guardia Act, 29 U. S. C. §§ 101-115 (1982), bars any efforts by private parties to secure injunctive relief, whether by an initial application to the courts or by an effort to correct an erroneous refusal to grant such relief pursuant to a petition filed by the Board.[3]

It is clear, therefore, that the legal issues posed in the Third Circuit are identical to those involved in the instant appeal by Sears and that a decision on the merits in the latter case will control the disposition of the former.

Moreover, the need for determining the nature and limits of charging parties' appellate rights under Section 10(1) can best be understood by appreciating the various contexts in which the issue arises and in which the impact of a resolution will be felt. It is further in the interest of all parties whose rights will be directly affected, should Sears' petition be granted, that this Court be apprised of the varying situations which its decision will control and for whose resolution it should therefore be tailored.

REASONS FOR GRANTING THE WRIT

(1) The Wide Range of Charging Parties' Vital Interests Requiring Clarification and Protection

The ramifications of a determination of charging parties' judicial rights under Section 10(1) of the Act are important, manifold and unexplored in this Court.

[3] The Third Circuit reserved ruling on the Board's motion until after it hears oral argument on the case later this year.

In *United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, Local 283 v. Scofield et al.; United Automobile, Aerospace and Agricultural Implement Workers et al. v. Fafnir Bearing Company et al.*, 382 U. S. 205, this Court declared the *right*, after a final Board order, of successful charging parties to intervene and participate as full "parties" in the appellate consideration of their cases notwithstanding the Board's participation on their behalf. Section 10(f) of the Act confers an equivalent right upon unsuccessful charging parties.

The question posed under Section 10(l) is whether any such rights exist on behalf of charging parties when the judicial consideration of their charges occurs prior to a final Board order. It is submitted that the rationale of *Scofield* and *Fafnir* compels the extension of this Court's recognition of charging parties' vested rights in the judicial litigation of their charges to all stages of that process.[4]

4. In arguing the irrelevance of *Scofield* to cases arising under Section 10(l), the Board's brief in the Third Circuit case emphasized the fact that *Scofield* dealt with the review or enforcement of final orders under Sections 10(e) and (f) rather than the securing of temporary injunctive relief under Section 10(l). The Board's attempted distinction is without merit. First, *Scofield* argued in terms of general truths concerning this right to be heard fully and effectively. The exercise of this right should not depend upon whether the hearing is on a request for needed permanent or needed temporary relief. Second, Section 10(h) of the National Labor Relations Act exempts from the operation of the Norris-LaGuardia Act *all* federal court proceedings authorized under Section 10—including 10(e), (f), (j) and (l)—so that no distinction between suits for permanent relief (10(e) and (f)) and temporary relief (10(l)) can be predicated upon Norris-LaGuardia. Third, the basis for permitting charging parties to participate in proceedings under 10(e) and (f) apply equally to 10(l), *i.e.*, to prevent harm to the charging party through an adverse decision to which the charging party was not a full and effective participant. The damage which an unlawfully boycotted employer may suffer who is unable to secure temporary injunctive relief from an illegal strike is no less than the damage he may suffer as a consequence of a final order of the Board. Surely, mere speculation as to the

The problem has arisen in a variety of contexts. The *Sears* case in the Tenth Circuit involved the right of charging parties under Section 10(l) to appeal an adverse order of the District Court when the Board refused to appeal. The pending *Samoff* case in the Third Circuit deals with the rights of charging parties to appeal the District Court's erroneous refusal to permit them to exercise there the participatory role expressly granted them in Section 10(l), as well as to appeal the District Court's refusal to grant injunctive relief. The question in *Retail Clerks Union, Local 137* v. *Food Employers Council, Inc.*, 351 F. 2d 525 (CA 9, 1965), concerned the extent to which charging parties could perform an independent role in the District Court in support of the Board's petition for an injunction after the Board changed its mind about pursuing the relief sought in its own petition. *Houston Insulation Contractors Association* v. *NLRB*, 339 F. 2d 868 (CA 5, 1964), involved a charging party's attempt to secure a stay of a Board order in the Court of Appeals the effect of which would be to continue in force an injunction granted under Section 10(l) which would otherwise have expired. And in *San Francisco-Oakland Newspaper Guild* v. *Kennedy*, ___ F. 2d ___, 69 LRRM 2537 (CA 9, 1968), a successful charging party sought to intervene in the Appellate Court in an action brought by a union to review the District Court's grant of injunctive relief under Section 10(l).

Although each of these cases involved a somewhat different question from the others, yet they are alike in that the result in each hinged on an interpretation of the rights accruing to charging parties under Section 10(l) of the Act.

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difference, if any, in the quantum of damage suffered cannot serve as the basis for denying the right to the fullest possible participation by the charging party.

It follows, therefore, that the logic of *Stofield* applies as well to cases under Section 10(l).

The variety of situations in which charging parties' rights depend upon an analysis of the meaning of that Section invites this Court's attention. The diversity among the Court of Appeals' decisions which have undertaken such an analysis requires such attention. Thus the Tenth Circuit in the *Sears* case prohibited charging parties from appealing a denial of the Board's petition for injunctive relief principally in reliance upon the alleged requirements of Norris-La Guardia,[5] while the Ninth Circuit in *Retail Clerks* held Norris-La Guardia to be irrelevant to charging parties' efforts to support the Board's petition in the courts. Although the Fifth Circuit in the *Houston* case expressly reserved decision on the applicability of Norris-La Guardia to charging parties' efforts to obtain injunctive relief via a stay, both the court's language and its action in granting the stay strongly suggest that it would not find Norris-La Guardia to constitute a bar in cases where the Board had itself filed a petition for such relief at an earlier stage in the case. And whereas this Court in *Scofield* accorded successful charging parties equal status in the appellate courts with those who had not been successful, the later Ninth Circuit decision in *San Francisco-Oakland* refused to do so by denying charging parties the right to intervene at the appellate stage of Section 10(l) litigation.[6]

5. The *Sears* case appears to constitute the first instance in which a charging party before the Board has argued that it enjoyed the status of a "party" in 10(l) cases without the need, therefore, for seeking to intervene in order to protect its rights.

6. Although the Ninth Circuit restricted charging parties to the status of *amicus curiae* both in *Retail Clerks* and in *San Francisco-Oakland*, that result may well be attributable to the fact that in neither case did the charging parties argue that they were accorded "party" status in Section 10(l). An additional consideration may be that the charging parties in both cases had been successful in obtaining injunctive relief in the District Courts and, in the Ninth Circuit's view, could adequately protect their rights by filing briefs since the Board continued to represent their

Accordingly, in recognition of the range of problems which have arisen, and which will continue to arise in the absence of this Court's illumination of charging parties' judicial and appellate rights under Section 10(l), together with the need to harmonize the conflicting decisions of the Courts of Appeals which have explored the breadth of those rights, this Court should grant Scars' petition for writ of certiorari.

(2) Congress Intended to Confer Appellate Rights on Charging Parties in Proceedings Under Section 10(l)

The scheme of the National Labor Relations Act, which makes the interests of the charging party central to all proceedings, is inconsistent with a denial of appellate rights at any stage of litigation resulting from an initiation of agency action. Scars' petition for writ of certiorari herein demonstrates this point at pp. 6-12. See also Jaffe, *Judicial Control of Administrative Actions* p. 545 (1965). In addition to the matters raised there, the following additional points make clear Congress' purpose to confer such appellate rights in Section 10(l).

(a) Legislative History of Section 10(l)

The debates preceding the adoption of the Taft-Hartley amendments to the labor laws dealt extensively with the degree to which charging parties before the Board should be accorded the rights of parties to full participation in, and independent access to, the District Courts in cases where unions engage in unlawful secondary and organizational picketing

interests in the Court of Appeals. Such a rationale could not apply in cases such as Scars' Tenth Circuit case, where the charging party was unsuccessful in the District Court and the Board refused to appeal. In such cases, absent a right to seek review directly, the charging parties find themselves with interests to protect but no judicial vehicle to which to protest them.

An analysis of these debates reveals that in Section 10(l) Congress effected a compromise; while it limited charging parties' rights independently to initiate injunction proceedings in the courts, at the same time it sought to guarantee to charging parties the right of full participation in such proceedings once they were initiated by the Board.

The essential conflict which Congress was required to resolve was between the interest of private parties to the speediest and most direct remedy against the devastating effects of illegal boycotts and strikes, and the opposing policy of the Norris-La Guardia Act to limit the jurisdiction of the District Courts to issue injunctions in labor disputes. The former interest required expeditious access to the courts' injunctive processes; the latter policy offered protection against a system whereby private parties could create a body of law formed by courts from theories urged by private parties independently of or in conflict with these urged and developed by the Board.

By way of resolving these conflicting values the House bill elected to permit private parties to move independently and unilaterally for injunctive relief:

> The House bill [H. R. 3020], in section 12, provided for injunctions at the request of private persons, rather than by the Board, in cases under Section 10(l). *House Conference Report* No. 510, Leg. Hist. 561

This provision was not adopted since it would have constituted a virtual repeal of Norris-La Guardia. However, similar proposals were made in the Senate, evidencing the tangible support which existed for direct private injunctive relief.

Throughout the Senatorial debates on the Taft-Hartley amendments and all the most serious and recurring disputes centered on the so-called Ball amendment. Senator

Ball sought to convince his colleagues that private parties should be permitted to seek court injunctions whenever they were individually aggrieved by secondary boycotts and other unlawful picketing, and without prior recourse to the Board. It was argued that this was the best method for avoiding potential harm (Leg. Hist. 561-562, 1057-1058, 1350). As argued by a supporter of this amendment, Senator Donnell,

> "[An injured party] should be entitled to engage his own attorney, go into a court which he selects, and direct the conduct of his litigation." (Leg. Hist. 1353.)

The Ball amendment was defeated, however, for the same reasons which prevented the adoption of the similar provision in the House bill; while Congress was sympathetic to the needs of private parties for the protection afforded by injunctive relief, it was unprepared to permit them to *initiate* such suits independently and at will (Leg. Hist. 1057-58, 1149, 1370, 1544).

Section 10(l), as ultimately enacted, predictably represented a compromise. (1) In order to provide a meaningful remedy for employers faced with injurious unlawful picketing, mandatory injunctive relief was afforded. (2) However, in order to avoid a situation where employers could forum-shop and achieve an independent development of the law through *their* selection of theories of violation and relief, the right to *initiate* injunction suits was limited to the Board. (3) In order to guarantee private parties the right to full participation in court proceedings stemming from unlawful strikes and picketing, *after* the Board initiates the action, Section 10(l) was drafted expressly to confer on charging parties rights associated only with full "party" status. (4) And in order to eliminate the possibility that Norris-La Guardia might be interpreted to impose a limitation either on the Board's right to institute such injunction proceedings or on charging parties'

rights thereafter to fully pursue their interests in those proceedings, Congress enacted Section 10(h) providing:

> "When granting appropriate temporary relief or a restraining order, . . . as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115) [Norris-La Guardia Act]."

Accordingly, a review of the legislative history of Section 10(l) reveals Congress' purpose, specifically expressed in the statutory language, to accord private charging parties the full rights of "parties" in District Court proceedings, limited only by their inability to file such actions in the first instance or to expand the theories, facts, or relief sought in the Board's pleadings. Consequently, when the Board does initiate an injunction action, and charging parties thereafter seek the success of the Board's petition, whether in the District Court or in appellate courts, charging parties thereby exercise rights which the legislative history of the Act demonstrates that Congress intended them to possess.

(b) Charging Parties' Status in Proceedings Under Section 10(l) Was Made Analogous to Their Status in Administrative Proceedings Before the Agency in Which They Are Accorded the Right of Appellate Review.

Although their charges initiate the Board's investigation of their cases, charging parties cannot compel the Board to issue a complaint; that right, under Section 3(d) of the Act, is within the exclusive province of the Board's General Counsel. *Hourihan v. NLRB*, 201 F. 2d 187 (CA DC, 1952), cert. den. 345 U. S. 930. Neither can the charging parties control what the complaint shall allege nor seek unilaterally to expand its allegations once it is filed. *Pia*

judicial process," similarly the Board may not control the courts' expeditious use of cases under Section 10(l) once the filing of the Board's petition for an injunction has conferred jurisdiction on the courts. In both instances rights conferred on charging parties give them an independent role in pursuit of the aspects of the Board's complaint or its petition under Section 10(l).

(c) Congress Would Not Have Made the Exercise of Charging Parties' Vested Rights a Matter of Fortuity

Pursuant to the decision of the Tenth Circuit which Sears seeks to sustain in this Court, the protection of charging parties' vested rights under Section 10(l) depends upon the Board's willingness to seek judicial review. This applies both to a District Court's denial to charging parties of rights expressly conferred *upon them* in Section 10(l), as well as to the erroneous denial by the District Court of the relief to which charging parties are entitled. Moreover, the Board's decision as to whether or not to appeal adverse and erroneous court decisions often depends, as this Court noted in Scofield, on "tactical" or "administrative" considerations unrelated to the merits. The Tenth Circuit thus would render the enforcement and protection of charging parties' rights subject to fortuities and extraneous considerations beyond their power to control or affect.

Furthermore, the Tenth Circuit's decision would import into the Congressional scheme an obviously unintended paradox: should the District Court find merit in the Board's petition and grant an injunction, the adjudged wrongdoer has an immediate right to appellate review; though the District Court erroneously refuses to grant an injunction, the wronged victim has no such right.

The Tenth Circuit would permit such review since the Norris-LaGuardia Act could constitute no bar to an appeal since no injunction had already been granted pursuant to the Board's petition.

Absent a clear statement that Congress in fact intended such results, the converse of which is true, no such assumptions should be indulged.

(d) Congressional Intent as Revealed in a Comparison Between the Language of Sections 10(j) and 10(l) of the Act

Sections 10(j) and 10(l) are alike in that both authorize the Board, acting through its Regional Directors, to institute petitions for injunction when the Regional Director believes that charged unions have engaged in such injurious unfair labor practices as to render extraordinary injunctive relief appropriate. The sections differ only in that pursuant to Section 10(j) injunctive relief *may* be sought for any violation of the statute whereas Section 10(l) provides that such relief *must* be sought for the violation of the specific and particularly injurious unfair labor practices enumerated therein.

Whereas Section 10(l) requires that charging parties be notified of the filing of the petition and be permitted to appear by counsel and present any relevant testimony, Section 10(j) requires only that they be notified of the filing of the petition. The difference in the nature and extent of the rights granted the respective charging parties in these sections manifest Congress' intent to confer on charging parties in 10(l) cases such rights of participation as would guarantee the fullest protection of their interests. Such a guarantee goes beyond the presence at and the representation by the Board, which was deemed adequate to protect charging parties in cases arising under 10(j), but affirmatively conferred upon charging parties in 10(l) cases the status of "parties."

The difference between the rights accorded in the two sections is justifiable on two grounds. First, the nature of the unlawful acts with which Section 10(l) deals inherently involves the greatest potential harm to their aggrieved victims. For this

Indeed, if Congress believed that the judgment and participation of the Board in injunction proceedings under Section 10(l) would suffice fully to protect the charging parties' interests, and that they should have no *independent* role in the participation and prosecution of the case which was not circumscribed by the Board, then there was no need for Congress explicitly to confer rights upon charging parties in 10(l) cases which were denied to those in 10(j) cases. The adoption of such a view would render meaningless the deliberate statutory distinction between the rights conferred in the two sections. It follows, therefore that Congress intended to accord charging parties in 10(l) cases the status of "parties", clothed with the rights of that status.

(3) The Tenth Circuit's Decision Represents a Retrogressive Step in the Judicial Evolution of Charging Parties' Rights

There has been recently an expanding awareness in the courts of the legitimate rights and interests of charging parties under the Act. The decision of the Tenth Circuit constitutes an unfortunate retreat from the movement of those courts.

The Ninth Circuit's decision in *Retail Clerks* represented an effort to narrow the discretion of charging parties' rights from the level of right to that of an accident of their

SHOULD THIS COURT GRANT THE PETITION FOR WRIT OF CERTIORARI, IT IS REQUESTED TO DELAY ORAL ARGUMENT UNTIL AFTER THE THIRD CIRCUIT RENDERS ITS DECISION IN SAMOFF v. INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE NO. 1 (NOS. 17,907; 17,910)

As explicated above, the *Samoff* case now pending in the Third Circuit, in which Terminal Freight Handling Co. and Terminal Freight Cooperative Association are involved as appellants, raises the same issues, in a related context, as does the instant case. If this Court grants Soars' petition, it is submitted that all parties would benefit from having before them the Third Circuit's decision on the same question being argued here. Whatever decision is reached in *Samoff*, it will create a further conflict in the already divided Circuits. Delaying oral argument will thus enable this Court to resolve all such conflicts at once, aided by the thinking of still another court which will have devoted itself to an analysis of these issues. Inasmuch as the Third Circuit case is scheduled for argument this autumn, no substantial delay would result from the granting of this request.[9]

[9] This Court has granted such requests in the past at the instance of amici curiae. See, for example, the similar request made and granted in *Red Lion Broadcasting Co., Inc., et al. v. Federal Communications Commission and United States of America*, U. S. ——— (No. 690, October Term, 1967).

CONCLUSION.

For the foregoing reasons, it is urged that this Court grant Sears' petition for a writ of certiorari and delay oral argument in the case until the Third Circuit renders its decision in *Samoff v. International Association of Machinists, Lodge No. 1*, docketed in that court as Nos. 17,907 and 17,910.

Respectfully submitted,

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